

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

THOMAS CLAY WADE,
Defendant.

Criminal Action No. 10-201

MEMORANDUM ORDER

On July 27, 2015, Defendant Thomas Clay Wade (“defendant”) filed a pro se motion for release from confinement (ECF No. 249) under 28 U.S.C. § 2241, in which he argues the Supreme Court’s decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), invalidates his sentence as an armed career criminal. Because a notice of appeal (ECF No. 243) was filed on defendant’s behalf on January 31, 2015, the court is without jurisdiction to entertain this motion. See *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam) (“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). Rule 37 of the Federal Rules of Criminal Procedure governs the present situation:

(a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) **Notice to the Court of Appeals.** The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it

would grant the motion or that the motion raises a substantial issue.

(c) Remand. The district court may decide the motion if the court of appeals remands for that purpose.

FED. R. CRIM. P. 37. The court will deny defendant's motion without prejudice to him raising this argument in an appropriate motion after his direct appeal has been decided.

Defendant asks this court to "supplement this motion into [his] direct appeal that is currently being decided." (ECF No. 249, at 5.) Since defendant is represented by counsel before the Court of Appeals for the Third Circuit, he is advised to confer with his counsel about filing his motion with the court of appeals.

Dated: August 3, 2015

/s/ Joy Flowers Conti

Joy Flowers Conti

Chief United States District Judge